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Company, LLC, Fox Sports 1,
LLC (as successors-in-interest to
Fox Cable Networks, Inc. and Fox
Broadcasting Company), and Big
Ten Network, LLC

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re College Athlete NIL Litigation

Case No. 4:20-cv-03919 CW

**DECLARATION OF KAI DHALI WAL IN
SUPPORT OF PARTIES' JOINT OMNIBUS
MOTION TO SEAL**

Filed pursuant to L.R. 79- 5(c)(1), (f)(3)

DECLARATION OF KAI DHALI WAL

I, Kai Dhaliwal, declare as follows:

1. I am Senior Vice President of Business and Legal Affairs for Fox Sports Media Group. In that capacity, I provide legal and business affairs services to various subsidiaries and affiliates of Fox Corporation that televise and distribute sports content on the FOX broadcast network, Fox Sports 1 and Fox Sports 2 cable networks, and the Big Ten Network (“BTN”) (referred to collectively herein as “Fox Sports”). Pursuant to Northern District of California Local Rule 79-5(f)(3), I, on behalf of Fox Sports, as Designating Party (as defined in Local Rule 79-5(f)), submit this declaration in support of the parties’ Joint Omnibus Motion to Seal portions of documents filed in connection with the parties’ class certification briefing in this action. I have personal knowledge of the facts contained in this declaration and, if called as a witness to testify in this matter, I could and would testify competently thereto.

My Background and the Background of Documents to Be Sealed

2. BTN is a cable television network dedicated to exhibiting video content relating to the Big Ten Conference (the “Big Ten”) and the member institutions of that conference. BTN is jointly owned by the Big Ten (through a holding company) and an indirect, wholly-owned subsidiary of Fox Sports Holdings, LLC. BTN was formed in 2006, launched in 2007, and is carried by numerous cable and satellite television operators, as well as other content distributors. BTN currently reaches more than 47.5 million households nationwide. Certain BTN programming and content is also distributed via the internet and mobile applications.

3. I have provided day-to-day legal services for BTN since 2007. My job responsibilities include legal and business affairs for BTN. My duties also include supervising other lawyers involved in BTN business deals.

4. In addition to my work involving BTN, I have provided day-to-day legal services for Fox Sports since 2007 that involves oversight and management of other Fox Sports media rights agreements and the other lawyers involved in those deals. In my role as Senior Vice President, I have personal knowledge about the legal and business relationships between and among Fox Sports and certain of the Defendant athletic conferences (the “Conference

1 Defendants”), and the details relating to the negotiation and substance of the various rights
2 agreements of certain of the Conference Defendants with Fox Sports. In particular, I have direct
3 involvement with the rights agreements with various Conference Defendants, including Big Ten,
4 the Big Twelve Conference, and Pac-12 Conference, and I have personal knowledge of their terms.

5 5. I understand that the parties in this action have filed provisionally under seal, and
6 are seeking to permanently seal, certain excerpts from, details of, and references to Fox Sports’
7 highly confidential and competitively sensitive media rights agreements with certain Conference
8 Defendants. Plaintiffs and the Conference Defendants have notified Fox Sports that such
9 confidential material appears in certain expert reports and expert deposition transcripts filed in
10 connection with the parties’ briefing in support of and in opposition to class certification in this
11 action.

12 6. Upon review of the notice and other details provided by counsel for the parties, Fox
13 Sports has identified two categories of confidential and competitively sensitive information that
14 appear in portions of the parties’ expert reports and expert deposition transcripts that have been
15 filed in connection with class certification briefing: (1) information that, if combined with other
16 publicly available material and/or other redacted material, could reveal financial terms of Fox
17 Sports’ media agreements (“Category A”); and (2) other specific terms appearing in Fox Sports’
18 media agreements that are competitively sensitive and highly confidential (“Category B”). A table
19 summarizing the confidential information in Category A and Category B that should be sealed is
20 attached as **Appendix 1** hereto.

21 7. The confidential information in Category A and Category B has been designated
22 “Network Strictly Confidential – Outside Litigation Counsel Only” (“NSC Information”) pursuant
23 to the operative protective orders in place in this action dated December 22, 2020 (ECF 137), and
24 February 8, 2021 (ECF 148) (the “Protective Orders”).

25 8. It is my understanding that pursuant to Paragraph 6 of the Protective Order dated
26 February 8, 2021, only select individuals may access NSC Information, and “only during the
27 course and scope of and to the extent necessary to litigate these actions,” including outside
28 litigation counsel of record for Plaintiffs and for Defendants, the Court, and consultants or expert

1 witnesses and designated providers of litigation support services, both of which are required to
2 provide notice to the applicable network and execute a certification prior to viewing NSC
3 Information.

4 9. I also understand that through the notice and certification process under the
5 Protective Orders, certain experts retained by the parties in this action were granted access to Fox
6 Sports' NSC Information. Those experts then included some of Fox Sports' NSC Information in
7 their reports and referenced it in their deposition transcripts filed in connection with parties' class
8 certification briefing. Those materials are now the subject of the parties' Joint Omnibus Motion to
9 Seal.

10 **Grounds for Sealing Confidential Information Identified in Appendix 1**

11 10. There are compelling reasons for protecting the confidential information at issue
12 from disclosure in a public court filing.

13 11. The NSC Information identified in Appendix 1 contain numerous non-public
14 financial terms (Category A) and other non-public contract terms (Category B) that consist of Fox
15 Sports' competitively sensitive and highly confidential business information (the "Confidential
16 Information"). Category A information relates to the financial terms of Fox Sports' media
17 agreements, which means that information could reveal what Fox Sports paid for various telecast
18 rights, license fees, as well as other specific financial terms, and other consideration. Where
19 Category A information covers the amount of money Fox Sports paid for various rights, Category
20 B information covers what those bundles of rights consist of including Fox Sports' rights to
21 broadcast certain games, which networks games must be telecast on, and other conditions of the
22 telecasts. These terms are the product of careful consideration by legal and business personnel and
23 sometimes intense negotiation between Fox Sports and its counterparties.

24 12. The financial terms and language of the media agreements drafted and prepared by
25 our team are the result of many years of experience and legal work product. We have been
26 negotiating and drafting these types of rights agreements for many years, and TV rights agreements
27 are at the core of Fox Sports' business. The media agreements excerpted, described, and referred
28 to in the parties' expert reports and expert depositions are the cornerstone of Fox Sports' business.

1 Both the content and the structure of these agreements embody considerable time, effort, and
2 thought on the part of Fox Sports' business and legal teams and give Fox Sports a competitive
3 advantage over its competitors. Furthermore, these agreements reflect Fox Sports' business
4 strategies and priorities. Accordingly, Fox Sports considers and treats these media agreements as
5 key business strategy information whose contents are highly confidential.

6 13. Fox Sports goes to great lengths to protect their Confidential Information from
7 being improperly disclosed. Fox Sports has policies and practices that require hard copies of their
8 Confidential Information to remain secured on Fox Sports' secured premises absent a legitimate
9 business justification. Electronic data containing the Confidential Information is stored on
10 computer systems that are password-protected. Access to the Confidential Information is limited
11 to employees with a business need for the information.

12 14. Disclosure of the media agreements discussed in the parties' expert reports and
13 expert deposition transcripts, or portions thereof, would reveal Fox Sports' highly confidential and
14 proprietary business and financial information to its media competitors and its suppliers of TV
15 rights. This could irreparably harm Fox Sports' business interests and competitive position in
16 numerous ways.

17 15. Fox Sports' ability to negotiate favorable contract terms with third parties is
18 essential to Fox Sports' competitive position in the marketplace and overall financial success.
19 Disclosure of the financial terms comprising Category A to Appendix 1, or the other deal terms
20 comprising Category B to Appendix 1, either to Fox Sports' competitors, sports leagues, teams,
21 athletic associations, or other college athletic conferences, including the Conference Defendants
22 in this action, could severely impair Fox Sports' ability to negotiate favorable terms in future
23 agreements.

24 16. If the Confidential Information were publicly disclosed or otherwise made available
25 to its competitors (e.g., other TV networks or content distributors), Fox Sports could be severely
26 prejudiced. Sports and entertainment broadcasting is highly competitive, and Fox Sports competes
27 against numerous other sports and entertainment networks for their viewing audience. If Fox
28 Sports' competitors had access to the Confidential Information, it would give those competitors

1 valuable insights into Fox Sports' business positions, tactics, and strategies. Disclosure of the
2 Confidential Information could severely undermine Fox Sports' ability to negotiate favorable
3 business deals in the future. In particular, competitors armed with the Confidential Information
4 would have an unfair negotiating advantage over Fox Sports in future competitive bidding
5 situations for the broadcast rights of other conferences, bowls, leagues, associations, or sports
6 teams.

7 17. Disclosure of the Confidential Information to each of the individual Conference
8 Defendants could be especially harmful to Fox Sports. The Conference Defendants have
9 independently negotiated their agreements with Fox Sports. Each individual Conference
10 Defendant currently only has knowledge of the Confidential Information pertaining to that
11 Conference's agreement(s) with Fox Sports, and each of those TV agreements is subject to explicit
12 and implicit confidentiality provisions. Therefore, the individual Conference Defendants have no
13 knowledge of the information pertaining to another Conference's agreement(s) with Fox Sports.
14 If that Confidential Information were disclosed to all of the Conference Defendants, then each of
15 them could use that knowledge against Fox Sports in the negotiation of any future agreements. In
16 particular, a Conference Defendant could create a package of terms that uses contractual precedent
17 as leverage to receive the most beneficial (and detrimental to Fox Sports) formulation of
18 contractual elements while not considering those provisions in the overall context they were
19 originally agreed to.

20 18. Consequently, the Confidential Information identified in Categories A and B in
21 Appendix 1 must be sealed to protect Fox Sports' demonstrated and critical interest in preventing
22 the harmful disclosure of the Confidential Information.

23 19. There is no less restrictive method available to safeguard Fox Sports' NSC
24 Information. The parties are not moving to seal the expert reports and expert deposition transcripts
25 filed with their class certification briefing in their entirety. Instead, the redacted material that the
26 parties now seek to seal covers only the precise information that could be used to reveal the
27 financial terms of media agreements with Fox Sports, and/or covers specific non-financial terms
28

1 of those media agreements. Anything less than full sealing of the redacted material could expose
2 Fox Sports' NSC Information and leave Fox Sports vulnerable to the harms outlined herein.
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5 I declare under penalty of perjury that the foregoing is true and correct. Executed on
6 September 28, in Los Angeles, California.
7

8 By: 

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APPENDIX 1“Category A” of NSC Information

Document	Citation	Basis for Sealing
Expert Report of Daniel Rascher (ECF No. 209-2)	p. 90-91 Ex. 9 & n.208	Redacted material reveals annual media deal rights fees paid
	p. 92 Ex. 10	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks’ media agreements
	p. 93 Ex. 11	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks’ media agreements
	p. 94 Ex. 12	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks’ media agreements
	Appx. Ex. C.5	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks’ media agreements
	Appx. Ex. C.6	Redacted material could, in connection with public and redacted information from this litigation, reveal the

		financial terms of Fox Networks' media agreements
	Appx Ex. C.7	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
Kilaru Decl. Ex. 7, Rascher Deposition Transcript Excerpts (ECF No. 251-7]	p. 68:24-69:1	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 69:2-3	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 69:4-5	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 69:6-16	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 72:21-24	Redacted material could, in connection with publicly available information, reveal

		the financial terms of Fox Networks' media agreements
	p. 73:3-13	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 91:23-92:8	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 93:4-15	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 94:3-5	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 107:14-109:9	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 157:3-158:1	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 159:12-160:12	Redacted material could, in connection with publicly available information, reveal

		the financial terms of Fox Networks' media agreements
	p. 187:13-188:11	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 188:18-189:15	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 191:10-23	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements
	p. 192:14-18	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 193:24-194:9	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 194:23-195:22	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 196:21-24	Redacted material could, in connection with publicly available information, reveal

		the financial terms of Fox Networks' media agreements
	p. 197:14-17	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 202:5-202:8	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 202:9-11	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 202:12-16	Redacted material could, in connection with publicly available information, reveal the financial terms of Fox Networks' media agreements
	p. 207:11-22	Redacted material could, in connection with public and redacted information from this litigation, reveal the financial terms of Fox Networks' media agreements

“Category B” of NSC Information

Document	Citation	Basis for Sealing
Expert Report of Bob Thompson (ECF No. 251-2)	p. 11, ¶ 3	Redacted material reveals specific non-financial terms

		of Fox Network media agreement
	p. 25	Redacted material reveals specific non-financial terms of Fox Network media agreement